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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENTS RAY L. RILEY, CONTROLLER; W. H. H. GENTRY, INHERITANCE TAX ATTORNEY; AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER.

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OPINIONS BELOW.

The majority and dissenting opinions of the Circuit Court of Appeals (R. 43–59) are reported in 89 F. (2d) 59. The opinion of the District Court for the District of Massachusetts (R. 26–37) is reported in 14 Federal Supplement 754.

JURISDICTION

The final decree of the Circuit Court of Appeals was entered March 15, 1937 (R. 59). The petition for a writ of certiorari was filed April 23, 1937, and was granted

May 24, 1937 (R. 61). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

We respectfully submit that the executor's statement of the questions presented (P. Brief, 2) is incorrect.

In its broader aspect the question is whether, where the tax officials of two States each assert that the decedent died domiciled in their State and that inheritance taxes are due their State on a resident basis, subdivision (26) of sec. 24 of the Judicial Code as amended January 20, 1936, may be construed to give a Federal district court jurisdiction of a suit by the executor to finally determine the question of the executor's or the estate's inheritance tax liability as between the two States and discharge the executor from further liability therefor by interpleading the tax officials of each of the two States; and if so, whether that subdivision so construed is constitutional.

In its narrower aspect the question is whether, in a case where the decedent's will was probated and the executor appointed in Massachusetts and thereafter the will is admitted to probate in ancillary proceedings in California and a different administrator with the will annexed there appointed, the Inheritance Tax Appraiser, (appointed by the California court at the time it admitted the will to probate, for the purpose of investigating and reporting to the court as to the amount of the California inheritance tax liability) the State Controller and the Inheritance Tax Attorney may be subjected, without their consent or the consent of the State, to the jurisdiction of the Federal District Court

of Massachusetts in an interpleader proceeding brought in that Court by the Massachusetts executor against them and the Massachusetts Tax Commissioner under subdivision (26) of sec. 24 of the Judicial Code as amended January 20, 1936, and enjoined from further performance of their official duties in connection with the pending tax determinative proceeding in the California court merely because those California respondents and the Massachusetts Tax Commissioner are each asserting that the decedent was domiciled in their respective State and that there is an inheritance tax due their State on such resident basis; and whether such a suit against the California respondents comes within the prohibition of the Eleventh Amendment.

The executor's erroneous statement of the questions is largely due to the fact that it has entirely ignored the California statutes and law, of which the Federal courts must take judicial notice, and in the light of which the allegations of the bill must be read.

FEDERAL STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statute involved is subdivision (26) of sec. 24 of the Judicial Code as amended by the Act of January 20, 1936 (49 Stat. 1096) and is set out in full at pages 7–9 of the Record (this will hereafter be referred to as the "Interpleader Act" or the "Act"). The more important parts are set forth here for convenience. It provides that the district court shall have original jurisdiction,—

> "(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person . . . being under

any obligation written or unwritten to the amount of $500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled . . . to any one or more of the benefits arising . . . by virtue of any such obligation; and

(ii) The complainant . . . (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

. . . . . .

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such . . . obligation until the further order of the court.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability."

BRIEF SUMMARY OF THE RESPONDENTS' PRINCIPAL POINTS.

A. THE INTERPLEADER ACT CANNOT BE CONSTRUED TO AUTHORIZE INTERPLEADER OF A DECEDENT'S INHERITANCE TAX OBLIGATION AS BETWEEN TWO STATES, EACH OF WHICH IS CLAIMING TO BE THE DOMICILIARY STATE.

1. "Bills of interpleader or bills in the nature of bills of interpleader" did not, in the meaning commonly attributed to them, include suits against a taxing entity to settle the question whether the plaintiff owed a tax to one or the other (p. 22).
2. It is not only essential to interpleader, but the Act expressly requires, that the parties defendant (the adverse claimants) be those who would be entitled to the plaintiff's tax obligation if their claims were established. But as the inheritance tax is owed to the State and as the State cannot be made a party defendant, either directly or through its officials, this essential cannot be complied with (p. 25).
3. It is not only essential to interpleader, but it is clearly necessary from the express language of the Act, that the court have such jurisdiction as is necessary to enable it to enter a decree validly discharging the plaintiff from further liability to the claimants. But the court has no jurisdiction over a State and therefore this essential cannot be complied with (p. 26).
4. To so construe the Act would necessitate imputing to Congress an intent to depart from its deliberate and settled policy, followed since 1910, of restricting the power of district courts to interfere with

the enforcement of state legislation and to impute an intent on the contrary to extend that power, notwithstanding the fact that Congress completely failed to express such an intention in terms unmistakably manifesting such a purpose (p. 27).

5. To so construe the Act would necessitate imputing to Congress an intent to provide a remedy for the dual domicile inheritance tax problems, which would probably not be acceptable to the States, and the constitutionality of which would be of grave doubt, without using any language, either in the Act itself or in its legislative history, to indicate that it had any intent so to do (p. 31).
6. To so construe the Act would violate the well established principle that a construction of a statute which raises a grave and doubtful constitutional question will not be adopted where some other is open to the court (p. 37).
7. To so construe the Act would necessarily impute to Congress an intent to circumvent the Eleventh Amendment, notwithstanding the fact that the legislative history of the Act shows clearly that Congress did not have in mind interpleader of inheritance tax or any other tax obligations (p. 41).
8. To so construe the Act would necessitate giving to the word "claimants" as used in the Act a different meaning, when the interpleader involved an inheritance tax obligation, than it had when the interpleader involved an obligation to an individual or corporation. This is so because the claimants interpleaded in the case of an inheritance tax obligation would not be the persons to whom the

obligation would be owed if their claims were established (p. 25).

9. To so construe the Act would necessitate disregarding, in a case where the interpleader involved an inheritance tax obligation, the express requirement that the parties interpleaded be those who are "claiming *to be entitled*" to the obligation, *i. e.* claiming personal ownership of it (p. 25).
10. If the Act were so construed, it would necessarily follow that a district court would have jurisdiction to settle a boundary dispute as between two States on an interpleader suit brought by a taxpayer whose property or domicile fell within one State or the other, depending upon the proper location of the boundary. Can it be that Congress has thus unwittingly taken from this Court its exclusive jurisdiction of such disputes (p. 54)?

B. The Case Does Not Come Within the Principle of *Ex parte Young*, and Such Cases.

1. The present suit, in order to be maintained against the California respondents, must be what is known in general equity jurisprudence as an interpleader suit (pp. 21, 22).
2. Interpleader suits rest on entirely different equitable principles than do suits such as were involved in the *Young* and other cases (p. 42).
3. In the *Young* and like cases the sole purpose of the suit is to prevent the defendant from doing something which he has no right to do; whereas in interpleader the purpose of the suit is to enable the plaintiff to be discharged in one action from an admitted liability claimed by two or more persons,

and to *require* those persons *to make their claims* at the same time in the same court (p. 43).

4. In the *Young* and like cases, the only party against which alone the relief asked is the state official, who is, for the purposes of the suit, stripped of his official or representative character; whereas, in interpleader the relief asked is relief from an obligation owed to State and therefore the only real party against which alone in fact the relief is asked and against which the judgment or decree effectively operates must be the State itself (p. 44).
5. In order for the *Young* and like cases to apply, it must be alleged that the California respondents are threatening a violation of the Fourteenth Amendment, *i. e.,* they must be threatening to do something which, if the plaintiff's contentions were correct, would violate that Amendment. But in the present case there is no allegation that domicile was not in California, or that they are acting arbitrarily or wrongfully in so contending, or that a determination of such a domicile would be erroneous. In the absence of such an allegation it must be assumed that there is or may be substantial evidence to support such a finding (p. 46).
6. Even if the taxes of each State were assessed and collected on the basis of its being found by its courts to be the domiciliary State, it would not follow, *ipso facto,* that one or the other State was violating the Fourteenth Amendment (p. 46).
7. The courts of one sovereign State are not bound by the determination of the jurisdictional fact of

domicile by the courts of another sovereign State (p. 48).

8. The Constitution does not guarantee uniformity of decision as to such a fact by the courts of two sovereign States (p. 48).
9. The States did not, by the Constitution, commit to the Federal Government the power to endow the Federal courts with the power to determine the jurisdictional fact of domicile for inheritance tax purposes or any other purpose where the rights of the State claiming jurisdiction would be affected (p. 49).

C. In Any Event the District Court had no Jurisdiction to Maintain the Present Suit Against These California Respondents.

1. The allegations of the bill must be read in the light of the California statutes and laws (p. 12).
2. The entire matter of determining and fixing the inheritance tax liability of the estate is a court proceeding (p. 12).
3. This court proceeding began with the appointment of Mr. Sproul as Inheritance Tax Appraiser by the court in which the probate proceedings were had (p. 13).
4. The Appraiser's only function is to act as an officer of the court with the powers of a referee to examine and report his determination to the court, which is then treated as an auditor's report in the subsequent hearing before the court, of which all parties interested are given notice (p. 13).
5. The tax liability is fixed by the judgment of the court, entered after that hearing, and the duty of

collecting the tax is on the County Treasurer (not one of the present respondents) (p. 13).

6. The inheritance tax obligation is owed to the State (p. 13).
7. The Controller comes into the court proceeding only after the Appraiser has filed his report and notice thereof has been given to the parties (p. 13).
8. The Inheritance Tax Attorney is merely the official attorney of the Controller (p. 13).
9. The Interpleader Act authorizes injunctions only against claimants, and none of these California respondents can be claimants within the meaning of the Act for none of them can be entitled to the tax obligation (p. 15).
10. The Inheritance Tax Appraiser may not be enjoined for the additional reason that he is an officer of the court. Section 265 of the Judicial Code prohibits injunctions against officers of state courts, and the Interpleader Act creates no exception to that provision. Nothing that any of the California respondents can do would operate to deprive plaintiff of its constitutional rights (pp. 15, 16).
11. It is settled that where collection of a tax cannot be enforced except by a suit in court, of which the taxpayer has notice, and in which all rights to contest the legality of the tax assessed are open to him as a defense, the taxpayer is not deprived of his property without due process of law (p. 50).
12. It is well established that due process is satisfied if its usual requisites, the right to a full and fair

hearing of its claim, are present at any stage of a tax proceeding (p. 17).

13. The Federal court has no jurisdiction to enjoin collection of state taxes when the plaintiff, as here, has not exhausted the state administrative remedies (p. 17).
14. The doctrine of *Ex parte Young* would not authorize an injunction against the California respondents, even if the suit were for the sole purpose of enjoining them, for the entire California tax proceeding is a proceeding in court (p. 36).

AS TO DIVISION I OF THE EXECUTOR'S ARGUMENT.

The admission of the will to probate in California in ancillary proceedings rather than in original proceedings has no bearing upon the question of domicile for the purpose of the California inheritance tax proceedings. *Estate of Bloom,* 213 Cal. 575. The executor has studiously refrained in the present case from taking any position either way on the question of domicile. At page 11 of its Brief it says that it seems clear that the decedent was domiciled "*either* in Massachusetts or California." The allegations and prayers of its bill are all framed on the theory that the executor is a disinterested stakeholder on this point. Indeed, such a position on its part was absolutely necessary in order to enable it to make out a case of interpleader, even on its own theory. If it had alleged that the decedent was a resident of Massachusetts and not of California, it would be in effect alleging that Massachusetts was entitled to the inheritance tax based on domicile and therefore would be interpleading Mr. Long as the representative of Massachusetts not as an individual threatening

to collect an unconstitutional tax, and the claimants interpleaded would, on the executor's theory, be the California individuals on the one side and the State of Massachusetts on the other, whereas under the Act all of the claimants must be "citizens of different states." It does not authorize the interpleader of a citizen of one State against another State. Nor would its suit even come within the category of a bill of interpleader or a bill in the nature of interpleader. A person who admits liability to A, but denies any liability to B, cannot interplead A and B even by a bill in the nature of interpleader.

The executor refers particularly to its allegation that the California respondents are determining the domicile in California and "are asserting and have threatened and are about to assess and attempt to collect" taxes based upon such determination. This allegation, must, however, be read in the light of the California statutes and law as to the powers and functions of these officials. When so read, it will appear that it is no part of the powers or functions of *any* of the California respondents to determine the decedent's domicile, or to assess or collect the tax.

The entire matter of determining and fixing the tax liability of the estate is a court proceeding which began, in the Hunt estate, with the appointment of Mr. Sproul as Inheritance Tax Appraiser by the Superior Court in which the probate proceedings were had. His only function is to act as an officer of the court with the powers of a referee and examine into the facts and make his determination as to the amount of the tax. His appointment is an indispensable step in every probate proceeding, and he is an essential part of the court.

Estate of Haskins, 170 Cal. 267; *Estate of Brown,* 196 Cal. 114. The tax proceeding begins with his appointment. After this report is filed in the court the Controller and all other persons interested are notified, and if any objections are filed, the matter is set down for hearing before the court, at which the report is treated as prima facie evidence, like an auditor's report. The Inheritance Tax Attorney is merely the official attorney for the Controller and would represent the Controller at such hearing. After hearing, the court makes its order fixing the tax, which order has the force and effect of a judgment in a civil action with all rights of appeal. When the court's judgment has become final, it is then the duty of the County Treasurer to collect the tax and pay the same to the State Treasurer. (The pertinent California statutes as they stood at the time of decedent's death in 1935 are set forth in the Appendix to this brief.)

It thus appears that the allegation that the California respondents have determined that Hunt died domiciled in California amounts to nothing more than an assertion that they have come to that conclusion in their own minds, and not that there has been any official determination of domicile; and that the allegation that they are threatening and are about to assess and attempt to collect the tax amounts to nothing more than an assertion that in the pending court proceedings they will, when the time comes, contend that the *court* should determine the domicile to be in California and that the court should fix the tax accordingly.

This examination and analysis of the California law is fundamental to a proper understanding of the issues

in this case, and particularly because it cuts the ground from under several of the most important parts of the executor's arguments,—*e. g.* that the California respondents are "claimants" within the meaning of the Act (P. Brief, 27); that they are "acting beyond their authority as state officials" (P. Brief, 24); that, in "exercising their power of office" they "are mistakenly and illegally abusing that power in a way to deprive the Hunt Estate of its constitutional rights" (P. Brief, 25); that they are "in possession of state power and attempting to use that power to the doing of wrongs which the Fourteenth Amendment forbids" (P. Brief, 30, 32); that they are officers whose actions are "immediately endangering the plaintiff's constitutional rights" (P. Brief, 31); that their position "in no way differs from that of the Virginia collector in the *Poindexter* case" who, in *seizing the property* of the taxpayer was held to have ceased to be an officer of the law and became a private wrongdoer (P. Brief, 37); and many others.

Perhaps it was in view of the California law that the executor in its Brief has started to mollify this allegation to some extent. In its Statement of the Facts (P. Brief, 5) it says that they *"assert* an inheritance tax *due that state* based on their *claim* of domicile." Does this mean any more than that they have come to the conclusion in their own minds that the decedent was domiciled in California and that in the pending tax proceedings in the California court they intend to take that position before that court *when the time comes* for them to report to or enter an appearance in that proceeding? Also, at page 10 the executor now says that they "are

determining the domicile in California," not they "have determined" it to be there. This language certainly connotes a pending process of the mind and not a past determination. It is a recognition of the fact that the Inheritance Tax Appraiser has not yet made his report to the Court, and therefore cannot yet have made his determination of domicile.

In view of their limited powers and functions in connection with any tax proceedings in California it becomes clear that none of the California respondents can be "claimants" within the meaning of the Act. To be such a claimant the person must be claiming "to be entitled" to the tax. At pages 16 to 17 of its Brief the executor purports, by the use of italics, to set forth the jurisdictional requirements of a suit under the Act, but it fails to italicize these quoted words which are equally important as a jurisdictional requirement. The tax is owed to the State (sec. 22 of the Cal. Tax Act) and none of the California respondents are entitled to any benefit arising by virtue of that tax obligation.

The Inheritance Tax Appraiser does not determine the domicile for the purpose of the tax. Such determination is made only by the court after notice to all interested parties and a hearing. Neither can he assess or collect the tax. The court judgment fixes the tax and the county treasurer (not a party), then collects it for the States.

Not only does it appear that he cannot be a "claimant" within Interpleader Act, but it appears that he is not such an official as could be enjoined by the Federal court, either under the doctrine of the cases relied on by

the executor or otherwise. Sec. 265 of the Judicial Code prohibits injunctions to stay "proceedings in any court of a State" except in connection with bankruptcy proceedings. This section includes all steps taken or which may be taken in the state court *or by its officers*. *Hill* v. *Martin,* 296 U. S. 393, 403. The Interpleader Act authorizes injunctions *only* against "claimants" enjoining them "from instituting or prosecuting" any suit (R. 4). The Appraiser can neither institute nor prosecute any suit or proceeding, nor does he claim to be entitled to any tax or to any benefit to be derived from the tax obligation.

Neither the Controller nor the Inheritance Tax Attorney can be held to be a "claimant" within the Act. Neither claims nor can claim "to be entitled" to the tax obligation or any benefit to be derived therefrom. Neither can fix or assess the tax. The tax liability is fixed only by the judgment of the California court after notice and hearing. It is the function of the county treasurer (not a party), acting for the State, to collect the tax. In fact the Controller where, as here, a will has been probated in the State and the Inheritance Tax Appraiser appointed, does not even come into the picture until *after* the Appraiser's report has been filed and the court has thereafter notified the Controller, and when he comes in, he is merely a party to the proceeding for the determination of whether there is any tax liability and the amount of such liability. His powers and duties are not like those of the officials who have been enjoined in the tax injunction suits relied on by the executor. The Inheritance Tax Attorney comes into the picture only as the Controller's attorney.

It further appears that none of the California respondents can do anything, or take any action, or even institute any suit or proceeding which would deprive the executor or the Hunt estate of its constitutional rights or endanger such rights. The executor makes no claim that the California laws are invalid, or that any of the California respondents are acting or threatening to act arbitrarily and without evidence, or that their conclusion, or determination if you prefer to call it that, that the decedent was domiciled in California is arbitrary and unsupported by evidence. Nothing any of these California respondents can do will operate to endanger the executor's constitutional rights. It is the judgment of the court and not the Appraiser's determination "which finally fixes the liability to pay the tax," and the estate has a full opportunity to be heard before such judgment. There is no denial of due process. *Nickey* v. *Mississippi,* 292 U. S. 393, 396.

It is well established that due process is satisfied if its usual requisites, the right to a full and fair hearing of its claim, are present at any stage of a tax proceeding. *Pittsburgh etc. Ry. Co.* v. *Board of Public Works,* 172 U. S. 32, 45. Even if these officers were tax assessors the Federal court may not interfere to stop them from performing their statutory duty for fear they may perform it wrongfully. *First Nat. Bank* v. *Albright,* 208 U. S. 548; *Dalton Adding Machine Co.* v. *State Corporation Commission,* 236 U. S. 699. *A fortiori* a state officer whose only function is to press the contentions of the State before the tax determining body sometime in the future may not be enjoined. Nor has the Federal court jurisdiction to enjoin the collection of state taxes alleged to violate the Federal Constitution or laws when the

plaintiff, as here, has not exhausted the state administrative remedies. *First Nat. Bank* v. *Weld County*, 264 U. S. 450; *Gorham Mfg. Co.* v. *Tax Commission*, 266 U. S. 265.

While it is true that intangibles are subject to the imposition of an inheritance tax only by the domiciliary state and that a person cannot have more than one domicile at a time, it is equally well established that where the jurisdiction of a sovereignty depends upon domicile, each sovereignty may determine that jurisdictional fact for itself and is not bound by the determination of that fact by another sovereignty. It is also equally true that the Constitution does not guarantee uniformity of decision as to such facts by the courts of two sovereign states (these points will be developed further at page 50 *infra*).

The executor is not in the position of "helplessly watching two wholly inconsistent attempts to collect taxes" from the estate. It cannot be assumed that the California court will make an erroneous determination of domicile. (The domicile for California tax purposes can be determined *only* by the California court, and not by any of the California respondents.) We know of no instances where an estate has been required by the California court having jurisdiction of the estate to pay an inheritance tax based on any erroneous determination of domicile. On the contrary, it must be assumed that the courts of each state, on the same evidence will reach the same, and not inconsistent, conclusions as to the domicile.

Because the Pennsylvania and New Jersey courts each found the domicile to be in their own State in the Dorrance case, it does not follow, nor is it to be assumed,

that in every instance a state court will find the domicile to be in its own State. See *Matter of Trowbridge*, 266 N. Y. 283. In any event the executor can by proper procedure preserve his rights in each court and in case of an erroneous decision as to the domicile take the necessary steps to have each case reviewed by this Court. There is nothing in the *Dorrance* litigation to indicate that this Court would not grant a review. *Dorrance* v. *Pennsylvania*, 287 U. S. 660, certainly indicates that a review would be granted in such a case. See also *Johnson Oil Co.* v. *Oklahoma*, 290 U. S. 158.

The present suit is neither a proper nor a satisfactory method of determining conflicting domicile claims. It is unwarranted in law and replete with the possibility of hardship from the States' point of view. This is evident from the reports of the Committee of the National Tax Association (P. Brief, 14).

That Report, made in 1935, contains the following comment as to a suggestion that Congress enlarge the jurisdiction of the Federal district courts to cover such cases:

> "It has been suggested that Congress be induced to pass legislation specifically enlarging the jurisdiction of Federal District Courts to include such cases of disputed domicile in tax matters. There is grave doubt whether the Federal Constitution confers upon the Federal Government the power to pass legislation under which two or more states may be joined in a proceeding in a Federal court for the purpose of determining the domicile of a decedent. *Each State involved would say that when it subscribed to the Federal Constitution it did not surrender to the Federal Government its power to say*

whether a decedent was domiciled within its borders; that this is purely a matter for state determination except that, if a state commits a wrong for which redress may be had under the Federal Constitution, the remedy is by action of the executor against the offending state by certiorari from the highest state court to the United States Supreme Court."

We suggest that it is unlikely, in view of the fact that Massachusetts strenuously objected to the jurisdiction of this Court in the original proceedings brought by Texas in the matter of the Green estate, that its Tax Commissioner would be taking the position he is now taking in the present case had it been brought in the Federal court in California instead of in Massachusetts.

The Report also pointed out that "many of the States would probably take the view that any decision as to domicile is peculiarly a state question and would be unwilling to surrender the power of determination to a Federal court. Moreover, there is the recurring difficulty as to whether all of the States claiming domicile could be made parties, and if they were not parties, they might feel that they ought not to be bound by the litigation."

Is any solution fair to the States which subjects them to being dragged, willy nilly, into whichever of two or more Federal district courts an executor may select to try out this vital issue of domicile, the number of possible choices depending upon the number of different States claiming a tax? Is any solution fair in which the executor's costs, including counsel fees, would come out of the amount of the tax due to the prevailing State?

[In interpleader the plaintiff's costs customarily come out of the property or fund in dispute. *Mutual Life Ins. Co.* v. *Bondurant,* 27 F. (2) 464, 465, certiorari denied, 278 U. S. 630; *Mass. Mutual Life Ins. Co.* v. *Morris,* 61 F. (2) 104. (See also prayer 7 of the bill (R. 6)).] Is it reasonable to impute to Congress an intent to provide such a solution when there is nothing in its legislative history to indicate that Congress had any idea that it was dealing with such a problem or providing a solution for it?

While the States might agree on the desirability of there being one forum for settling domicile for inheritance tax purposes, it would require a very considerable discussion and negotiation before they could agree as to where or what that forum is to be, or agree as to who is to have the authority to select the forum in a particular case. Surely it is not within the province of a court to so construe an act of Congress as to give to executors the power to select that forum, particularly when there is nothing in the language or history of the Act to indicate that Congress ever intended to give them such power, or even contemplated that it might be held to have so done. Certainly this is not one of the matters as to which the States gave Congress the power to legislate. A *fortiori* "judicial legislation" to that effect cannot be justified.

AS TO DIVISION II OF THE EXECUTOR'S ARGUMENT.

The present bill does not state a case within the *fair intendment* of the Interpleader Act. While it is true that the Act was intended to afford relief in cases outside of the earlier interpleader statute, and to include bills in the nature of interpleader, it is equally clear that there

is nothing in the Act or its history to evidence any intention to include any suits other than such suits as were commonly known, in general equity jurisprudence, to come within the scope of bills of interpleader or bills in the nature of interpleader.

The act, by its terms, applies only to "bills of interpleader or bills in the nature of interpleader." The report of the Senate Committee on the Judiciary (*infra*, pp. 63–77) makes it clear that the inclusion of bills in the nature of interpleader was intended to cover only such suits as ordinarily come within that category. As stated in Lawrence on Equity Jurisprudence, at sec. 929,

> "A bill in the nature of interpleader . . . is one in which, in addition to the determination of the controversy between the defendants, the plaintiff asks some other equitable relief by way of interest in the subject matter. *In other respects it is to be administered upon the same general principles as interpleader proper.*"

In *Sanders* v. *Fertilizer Works*, 292 U. S. 190, 199, this Court pointed out that the Act, as it stood before the 1936 Amendment, "authorized only an ordinary form of equitable relief." That statement is equally applicable to the present Act for bills in the nature of interpleader were only ordinary forms of equitable relief. The purpose of Congress in expressly including bills in the nature of interpleader in the 1936 Amendment is stated in the Senate Committee Report as follows: "The existing statutory language may be sufficiently broad to include bills in the nature of bills of interpleader, but one district judge has held to the contrary. *Therefore*, they have been expressly included in the proposed sta-

tute." (*infra,* p. 70). In *Caminetti* v. *United States,* 242 U. S. 470, cited by the executor in this connection (P. Brief 15) this Court said at pages 485–6: "Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them."

Interpleader of two taxing jurisdictions, either by bills of interpleader or by bills in the nature of interpleader, was far from being a commonly recognized form of relief in general equity jurisprudence. The better view was that neither would lie to determine to which of two taxing entities a taxpayer was liable for the tax upon his intangible personal property. *Macy* v. *Nantucket,* 121 Mass. 351; *Welch* v. *Boston,* 208 Mass. 326, 328; 25 Harvard Law Review, 174, 175–6. Pomeroy's "Equity Jurisprudence," 4th Edition, vol. 4, sec. 1467, indicates its disapproval of the cases sustaining interpleader in such instance. Considerations of public policy are against the entertaining of such bills. In the *Macy* case the only question was whether a *bill in the nature of interpleader* would ~~be.~~ lie The parts of the opinion in the *Welch* case to which the executor refers (P. Brief, 18) related only to the contention that a strict bill of interpleader would lie. The Massachusetts court then indicated that, *apart from those considerations,* it was at least very doubtful whether the bill could be maintained as a bill in the nature of interpleader, and proceeded to advance cogent reasons why equity should not thus interfere with the collection of taxes. Considerations of public policy and of the principle that the prompt collection of revenues should not be readily interfered with furnishes strong reasons against the enter-

taining of interpleader suits, or suits in the nature of interpleader, in such cases.

It has been the general policy of our law "that the sovereign's revenues should not be held up by injunction. *Smallwood* v. *Gallardo,* 275 U. S. 56, 61; Porto Rico Tax Appeals, 16 F. (2) 545, 548. The processing tax cases created no new exception. The present case is far from one which would fall within the category of those cases. *First National Bank* v. *Albright,* 208 U. S. 548; *Dalton Adding Machine Co.* v. *State Corporation Commission,* 236 U. S. 699. See also *First National Bank* v. *Weld County,* 264 U. S. 450; *Gorham Mfg. Co.* v. *Tax Commission,* 266 U. S. 265. If the executor should be aggrieved by a determination by the California court of a California domicile, it has an adequate remedy to have that error corrected, and if it had properly raised the Federal question in the California court, it could undoubtedly obtain a review by this Court. *Dorrance* v. *Pennsylvania,* 287 U. S. 660 (semble); *Johnson Oil Co.* v. *Oklahoma,* 290 U. S. 158. This is not a case where it would have no adequate remedy at law. Furthermore, in California this remedy could *all be availed of before* the executor could be required to pay any tax. See sec. 18 of the California Tax Act (*infra,* p. ~~42~~ 52).

The principle, relied upon by the executor, that a construction which causes grave public injury or which renders the statute inefficient should be avoided, has absolutely no application in the present case. It is only where an Act, by the ordinary meaning of its language, *plainly* was *intended* to cover a certain situation, that a construction to the effect that it did not cover such a situation can be said to *occasion* great in-

convenience, or produce inequality and injustice, or *cause* injury, or render the statute inefficient. By no reasonable stretch of the imagination can it be said that a statute, which authorizes only ordinary suits in the nature of interpleader against such claimants as are actually "claiming *to be entitled*" to the obligation in question and are "citizens of different States," can be construed as *fairly intended* to authorize such suits against persons who are *not* claiming to be entitled to the obligation, but are at most merely claiming that their principal, over which the court could not have or be given jurisdiction, is entitled to it, and where the *real* claimants,—*i. e.* the parties to which the obligation would be owed if established as claimed—are *not* citizens of different States! There is no similarily in character, principle or otherwise between the cases cited by the executor and the present case.

A mere reading of the Act demonstrates that the present bill is *not* within its scope or fair intendment. A study of its history confirms this conclusion.

From the very nature and purpose of interpleader or suits in the nature of interpleader it is *essential* that the parties impleaded—the parties defendant—be those who would be entitled to the plaintiff's obligation if their claim to it were established. The plaintiff comes into court "upon the most obvious equity to insist that those persons claiming *that to which* he makes no claim should settle that contest among themselves and not with him, or at his expense and hazard." Story, Equity Jurisprudence, 14th Ed., sec. 1117. The purpose of the remedy is to give the plaintiff in one suit a discharge from his obligation where there is a dispute as to which of two or more parties is entitled to that obligation.

Indeed, the Act expressly provides that the court "*shall discharge* the complainant from further liability" (R. 8).

Inheritance taxes are, in most if not all cases, owed to the States. Only the States themselves are *entitled* to the obligation. In any event that is so in California. See sec. 22 of the California Tax Act (*infra*, p. 62).

It must follow that if interpleader is to be invoked to determine to which one of two or more States a decedent's estate is indebted with respect to its inheritance tax obligation based upon domicile, the States themselves are not only the real parties in interest but are the necessary parties defendant. The plaintiff must be neutral on the issue of whether such tax is owed to State A or State B. That is the real controversy, and in order to determine that controversy, it is self-evident that the court must have before it the real parties in interest, which can be only the States.

Not alone do the general principles applicable to interpleader require that the claimants impleaded be the real parties who would be entitled to the obligation if their claims were established. The language of the Act itself is clear and unequivocal to that effect. The "claimants" must be "claiming *to be entitled*" to the obligation. Those "claimants" must be "citizens of different States." Those "claimants" must be the parties defendant.

In the case of California and of most States, the inheritance tax is an obligation to which only the State is entitled. The State, through its proper officials, claims that the decedent was domiciled in that State and that an inheritance tax based on that domicile is due to it accordingly. It must follow that the State can

be the only "claimant" in such a case within the meaning of the Act. The official cannot be such "claimant" for he cannot be claiming "to be entitled" to the obligation. In the present case the executor does not even argue that the California respondents or even the Massachusetts respondents, are claiming "to be entitled" to the claimed tax obligation. In its Statement at page 5 it says that the California respondents "assert an inheritance tax *due that state* based on their claim of domicile in California." As we have already pointed out, (*supra,* p. 13) that is all that the allegations of the bill amounted to, when read in the light of the California law, and this is now confirmed by the executor. Their "claim of domicile in California" is not a claim that *they are entitled* to an obligation. Their only claim is that their *State* is entitled to the tax obligation in question. Neither in ordinary equity jurisprudence nor under the Interpleader Act do bills of interpleader or bills in the nature of interpleader lie against claimants who are not claiming *to be entitled* to the obligation in question, but are only claiming that their principal or someone else is entitled to that obligation.

Not only would it do violence to the plain language of the Act to construe it as including within its scope interpleader of state tax officials, but it would impute to Congress an intent to *extend* the power of the district courts to interfere with the enforcement of state legislation notwithstanding that its uniform policy as shown by its other legislation since 1910 had been to *cut down* such power.

In 1910 Congress recognized that interference by interlocutory injunction with the enforcement of state

legislation was a matter of grave concern which should require an adequate hearing and full deliberation calling for the presence of a court of three judges, and the review of which on appeal should be had as speedily as possible, (sec. 266, Judicial Code, 28 U. S. C., sec. 380) *Stratton* v. *St. Louis & Southwestern Ry.* 282 U. S. 10, 14, 15. The injunction provision of the Interpleader Act is not materially different from what it was before the 1936 amendment. It then created no exception to the policy established by sec. 266. Its re-enactment in substantially the same language in the 1936 amendment cannot be held to create now such an exception. In 1934 Congress further limited the district courts power of interference with the enforcement of state legislation by withdrawing from the jurisdiction of the district courts suits to enjoin the enforcement by State administrative boards affecting public utility rates except in certain cases. (Act of May 14, 1934, 48 Stat. 775).

In the face of such a doubt as to whether such a tax liability could be interpleaded as a matter of general equity jurisprudence, and in view of such an established policy of the Congress, it is not reasonable to construe the Interpleader Act as authorizing interpleader of a plaintiff's tax liability as between two taxing jurisdictions, much less the interpleading of his tax liability as between two States. Had Congress had any intent to reverse its policy and *enlarge* the power of a single judge to interfere with the enforcement of state legislation, and intended that alleged conflicting inheritance tax claims were to come within the purview of the Interpleader Act, with the attendant result that the States' tax officials might be temporarily enjoined

by a single judge, "It would have expressed that intention in terms befitting such a departure,—that is to say, in terms unmistakably manifesting a purpose to make" this Interpleader Act apply to such cases. An intention to depart from a course or policy thus deliberately settled is not lightly to be presumed." See *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375, 384, 390–1.

The recent action of Congress in passing the Act of August 21, 1937, withdrawing from the district courts jurisdiction of all tax injunction suits under subdivision (1) of sec. 24 of the Judicial Code, except in certain cases, is a *further confirmation of its general policy* of restricting the power of the Federal courts to interfere by injunction with the enforcement of state legislation. Congress recognized that the existing practice of the Federal courts in entertaining tax injunction suits under subdivision (1) resulted in serious disruption of state and county finances, and that in many instances States were compelled to compromise these suits and to lose a substantial portion of their taxes without a judicial examination into the real merits of the controversy. It was the compelling needs of the States for a more prompt disposition of such tax controversies which impelled the Committee on Judiciary to recommend the prompt passage of that Act (Senate Report No. 1035, 75th Congress, 1st Sess.) The significance of this legislation is that it renders it hardly conceivable that Congress, within only about a year before, could have been intending to *enlarge* the jurisdiction of the district courts (*i. e.* make it nation wide) to interfere with the assessment and collection of state taxes and to empower single judges to issue interlocutory injunctions and *ex parte* restraining orders pre-

venting such assessment or collection. Such an intent cannot be imputed in the absence of anything clearly manifesting such an intent!

The *Dorrance* case was then pending. The National Tax Association had appointed a Committee in 1934 to study the problem of dual domicile in death taxation. That Committee had made a report in 1935, which had received wide publicity. This report discussed five suggested solutions, one of which was the Federal Declaratory Judgment Act, and the other was "legislation by Congress enlarging the jurisdiction of the Federal courts." These two suggestions of Federal legislation were rejected by that Committee. The suggestion of enlarging the jurisdiction of the district courts was rejected because there was grave doubt whether it would be constitutional and also because it would not be a satisfactory one from the States' point of view. Furthermore, there was before each of the Judiciary Committees at the time it was considering the 1936 amendment of the Interpleader Act a bill to further restrict the power of district courts by withdrawing from their jurisdiction suits to enjoin, suspend or restrain the assessment, levy or collection of state taxes, except in certain cases. (S. 2267; H. R. 6739, 75th Cong. 1st Sess.)*

In the face of these facts is it within the bounds of reason to so construe the 1936 amendment as to impute to Congress an intent to provide a remedy for these dual domicile inheritance tax problems which would prob-

* Although these bills were not reported out by these Committees at that session, the bill which became the Act of August 21, 1937 at the next session was almost identical with the parts of S. 2267 and H. R. 6739 referred to.

ably not be acceptable to the States, the constitutionality of which would have been in grave doubt, and which would *enlarge* rather than *cut down* the power of district courts to enjoin the collection of State taxes and thus be contrary to the established policy of Congress and the policy underlying S. 2267 and H. R. 6739, when there is not a word in the Act itself nor any utterance in its legislative history or in any writings of its author, written or published *before* the Act was passed to indicate that the author or any member of Congress ever contemplated that it might be so construed? To do so would necessarily imply, either an intentional silence on their part (which is unthinkable), or an amazing lack of legal acumen on the part of the author and every lawyer in Congress.

The executor apparently considers that the saving clause of the Act of August 21, 1937, was intended to except the pending suit under the Interpleader Act (P. Brief, 18). Therein it misconceives the scope and effect of Act of August 21, 1937. That Act does not deal with or affect the jurisdiction or powers of district courts under the Interpleader Act, which is subdivision (26) of sec. 24 of the Judicial Code. It deals only with subdivision (1) of sec. 24. Its only significance (which we submit is of *great* importance) is as pointed out above (*supra*, p. 29).

At pages 18–21 of its Brief the executor attempts to establish the point that it, as the Massachusetts executor, sufficiently qualifies as a complainant within the meaning of the Interpleader Act. We submit that it fails to do this. Although the taxing statutes in terms impose liability for the tax upon "all administrators,

executors, and trustees" of the estate,* yet the representatives referred in such statutes are only those who are the legal representatives of the estate in the particular State. *Goodrich* v. *Rochester Trust & Safe Deposit Co.*, 173 App. Div. (N. Y.) 577, 160 N. Y. Supp. 454. The Massachusetts executor is under no legal obligation or liability to pay the California inheritance tax, and could not be sued for it. *Dewey* v. *Des Moines*, 173 U. S. 193; *Colorado* v. *Harbeck*, 232 N. Y. 71; *In re Martin's Estate*, 240 N. Y. Supp. 393, aff'd 255 N. Y. 359; *People* v. *Union Trust Co.*, 255 Ill. 168. See also *Moore* v. *Mitchell*, 281 U. S. 18; and *Baldwin* v. *Missouri*, 281 U. S. 586 @ 598. The only legal representative of the Hunt estate personally liable for the California tax is the Security-First National Bank of Los Angeles, the administrator with the will annexed. The tax must be deducted by such administrator from the California assets before distribution.

The decision in the *Harbeck* case has not been affected by *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268. In the *Harbeck* case the suit was against the New York executrix and legatees to recover the total tax from the executrix, and to collect from each legatee defendant the amount assessed upon his legacy. None of the defendants had appeared in the Colorado tax proceedings. An administrator with the will annexed had been appointed in Colorado. The court held that "no personal liability based upon the receipt of a legacy arises except under the provisions of the Colorado statute that the person to whom the property is transferred shall be

*The provision of the California Tax Act is substantially identical. See sec. 3 (P. Brief 58).

personally liable for the tax until its payment and *that liability is purely local and statutory.*" The taxes were not debts or contracts. No contractual or quasi-contractual obligation to pay arose out of the assessment of the tax. In the *Milwaukee County* case a judgment had been "duly recovered and entered" in Wisconsin against the White Company, and the only question was whether that *judgment* was entitled to full faith and credit. The question certified stated that the Wisconsin judgment was a "valid judgment" which necessarily implies that it had proper jurisdiction over the White Company to enter the judgment.

No valid tax judgment could be entered by the California court against the executor, for that court would have no jurisdiction over the executor. Nor would such a tax judgment create any lien entitled to execution in Massachusetts. See the *Milwaukee County* case at p. 276. That decision establishes only that a tax *judgment* against a defendant entered by a court *having jurisdiction over* the defendant is entitled, under the full faith and credit clause, to be enforced in another State *against that* defendant.

At pages 21 to 23 of its Brief the executor recognizes that in interpleader the court must be able to discharge the executor from its acknowledged obligation, and attempts to show that the district court could, in effect at least, do so in such an interpleader suit as the present one. Of course this is one of the many points which the executor must establish to justify its construction of the Act.

It is immaterial whether or not there would be any likelihood in the present case of there being any controversy between the executor and the prevailing re-

spondents as to the amount of the tax liability. The real question is, could the district court have jurisdiction over such a controversy if it did arise? If it couldn't, then the Act cannot be construed to include interpleader of an executor's inheritance tax liability as between two States. Not even the executor would contend that such a controversy was not a controversy between the executor and the domiciliary State! A proceeding only to determine domicile and not to discharge the complainant from all further liability would neither be interpleader nor a proceeding in the nature of interpleader within any known principle of equity jurisprudence, and therefore not within the scope of the Act. It would be only a proceeding in the nature of such proceedings as are authorized by declaratory judgment acts, statutory proceedings which are not known in the common law or in equity jurisprudence.

The executor's argument (P. Brief, 23–25) to the effect that under the doctrine of *Ex parte Young,* 209 U. S. 123, the Interpleader Act authorizes the impleading of state officers to plead the claims of their States will be dealt with in our comments as to Division III of the executor's Brief.

The California respondents make no claim that the present suit comes within the scope of sec. 266 of the Judicial Code, or that *if* the Interpleader Act authorized the present suit and, *if* so construed, it were constitutional, and *if* they could be held to be "claimants" within the meaning of the Act, a single judge could not issue an injunction.

The Circuit Court of Appeals had full power to make the order which it entered, to wit: "That the order of the District Court granting a temporary injunction is

vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction" (R. 57). The District Court made two orders or decrees, one granting the injunction (R. 24) and the other denying the motion to dismiss (R. 23). The California respondents appealed from both. The C. C. A., however, dealt *only* with the appeal from the "decree granting an interlocutory injunction" (R. 43). This appeal raised the question of jurisdiction of the District Court over these California respondents. On such an appeal the Circuit Court of Appeals may direct a bill to be dismissed if it appears that the complainant was not entitled to maintain its suit. *Metropolitan Water Co.* v. *Drainage District,* 223 U. S. 519; *Meccano, Ltd.,* v. *Wanamaker,* 253 U. S. 136. It did not purport to deal with the appeal from the motion to dismiss, and there is no action with respect to that motion which is the subject of the present review.

The executor's argument at pages 27–28 to the effect that the California respondents are "claimants" within the meaning of the Act is fallacious for the reasons already stated (*supra,* pp. 14–18). The fact that in the *Young* case and in the *Schnader* case injunctions were maintained against state officials who were not claiming to be entitled to anything has no bearing in the matter. The officials in those cases were not alleged to be nor did they have to be "claimants", within the meaning of that word in interpleader. They were enjoined because they were threatening, through legal proceedings, to cause something to be done which would cause irreparable injury to plaintiff. A claimant in interpleader, however, must be the one who is *actually* claiming *to be entitled* to the property or obligation. *Klaber* v. *Mary-*

land Casualty Co., 69 F. (2) 934, 939. The 1936 amendment did not change the Act in this respect.

The executor's attempt at page 28 of its Brief to minimize the importance of the point that the respondent Sproul, the Inheritance Tax Appraiser, is a court officer signally fails. The entire inheritance tax proceeding in California is a proceeding in court which *began*, in the present case, with the court's appointment of Mr. Sproul as Appraiser. The Appraiser is but an officer of the court in that proceeding (*supra*, p. 12). It was for this very reason that in 1936 the District Court of the United States for the Southern District of California (Central Division), by a three judge court in the case of *Keller et al.* v. *Webb, Attorney General, et al.* (unreported) dismissed a bill brought under sec. 266 of the Judicial Code by executors of a will originally probated in Texas, who had also received an ancillary appointment in California, against the Attorney General, Controller, Inheritance Tax Appraiser and County Treasurer seeking to have them enjoined from attempting to assess or collect any inheritance tax based on a California domicile, the executors relying on *City Bank* v. *Schnader*, 291 U. S. 24.

The doctrine of *Ex parte Young* does not uphold an injunction against an officer of the court. At page 163 of the *Young* case this Court pointed out that the right to enjoin an individual, even though a state official, from commencing a suit, did not include the power to restrain a court from acting in any case brought before it, nor did it include power to prevent any investigation or action by a grand jury. "The difference between the power to enjoin an individual from doing certain things, and the power to enjoin the courts from proceed-

ing *in their own way* to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former." The prohibition of sec. 265 of the Judicial Code is comprehensive and "includes all steps taken or which may be taken in the state court *or by its officers* from the institution to the close of the final process." *Hill* v. *Martin,* 296 U. S. 393, 403. A federal court may not enjoin an officer of a state court from acting in a proceeding which was properly pending in the state court when the suit was begun in the Federal court. *Lion Bonding Co.* v. *Karatz* (the *Hertz* case) 262 U. S. 77, 87–90. The injunction provision of the Interpleader Act (R. 8) effected no modification of sec. 265 in this respect. It purports only to authorize injunctions against "such claimants," *i. e.* those who were such claimants as could be impleaded under the Act, enjoining them from "instituting or prosecuting any suit or proceeding" in the state court. As we have already shown (*supra,* pp. 14–18), neither the Inheritance Tax Appraiser, nor the other California respondents can be "claimants" within the meaning of the Act.

The well-established principle that a construction of a statute which raises a grave and doubtful constitutional question "will not be adopted, where some other is open to the court". *Missouri Pacific R. R. Co.* v. *Boone,* 270 U. S. 466, 471–2; *Interstate Commerce Commission* v. *Oregon-Washington R. R. Co.,* 288 U. S. 14; *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, requires that the Interpleader Act be not construed to include such a suit as the present one. The executor appears to assume that the mere fact that the District Court reached the conclusion that that Act should be construed to include such a suit, coupled with the executor's con-

clusion and assertion to that effect, is sufficient evidence that such a construction would not "raise a grave and doubtful constitutional question" (P. Brief 29). The District Court opinion was that of a single judge. Is it unimportant that a majority of the Circuit Court of Appeals reached a contrary conclusion? Is it unimportant that the District Court of the United States for the Northern District of Iowa, Cedar Rapids Division (Judge Scott), on June 30, 1937, in the case of *Boyer Exec. et al.* v. *Wegman, Treasurer et al.* (unreported), a similar proceeding brought by executors and legatees under the 1936 amendment of the Interpleader Act against the State Treasurers of Iowa and Oregon, dismissed the proceeding as against the State Treasurer of Oregon on the ground that the suit was in substance an action against the State of Oregon?* Is it unimportant that the Double Domicile Committee of the National Tax Association, in its second Report at the 1936 Conference, expressly referred to the fact that in its first report (in 1935) it had suggested that grave doubt existed whether the Constitution conferred upon the Federal Government the power to pass legislation "under which two or more states (as the real parties in interest) may be joined in a proceeding in a Federal Court for the purpose of determining the domicile of a decedent", and then said "We refer to this doubt because we do not wish to minimize its gravity by anything said herein . . ."? In its first report, which was

* In that case the executrix and other beneficiaries of the will of an Oregon decedent brought a bill in equity, patterned after the bill in the case at bar, to interplead the State Treasurers of Oregon and Iowa to determine whether certain intangibles claimed by the Iowa Treasurer to have acquired a business situs in Iowa, could be subject to inheritance tax in Iowa rather than in Oregon.

accepted by the Convention, it said in part, in reference to the suggestion that the jurisdiction of the district court be enlarged to include such cases of disputed domicile in tax matters: "*Each State involved would say that when it subscribed to the Federal Constitution it did not surrender to the Federal Government its power to say whether a decedent was domiciled within its borders;* that this is purely a matter for state determination except that, if a state commits a wrong for which redress may be had under the Federal Constitution, the remedy is by action of the executor against the offending state by certiorari from the highest state court to the United States Supreme Court." Is not the action of that convention in accepting that report extremely persuasive to the effect that the construction contended for by the executor would raise a grave doubt as to the constitutionality of the Interpleader Act?

In most of the cases where such a principle was followed, the language of the Act was such as to lend considerable force to the construction contended for, and the court rejected such a construction because it would raise a constitutional doubt. In the present case there is nothing of the sort, either in the Act ~~of~~ its history, and it is only by the most tortuous kind of reasoning that the construction contended for is arrived at! If read according to its terms, the Act presents no difficulty. It does not purport to apply to obligations to States, but only to obligations to "residents" of States. An inheritance tax obligation is owed to the State, not to any "resident" of the State. The tax officials do not claim to be "entitled" to such obligation. It does not purport to authorize interpleader of representatives of an entity which would be entitled to the obligation if its claim were established. "A condition should not be

implied which, to say the least, would raise a grave question as to the constitutional validity of the act." *Russian Fleet* v. *United States,* 282 U. S. 481, 492. We cannot attribute to Congress an intent to defy the Eleventh Amendment or "even to come so near to doing so as to raise a serious doubt of constitutional law". *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337, 351–2.

In *Hans* v. *Louisiana,* 134 U. S. 1, this Court was dealing with just such an attempt to strain the construction of the Eleventh Amendment, and the language used by the Court in that opinion (which has since been quoted with approval in *Monaco* v. *Mississippi,* 292 U. S. 313, 326) needs but slight change in wording to be equally apropos in the case at bar. At page 15 the Court said:

> "It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of. Can we suppose that, when the Eleventh Amendment was adopted, it was understood to be left open for citizens of a State to sue their own state in the federal courts, whilst the idea of suits by citizens of other states, or of foreign states, was indignantly repelled? Suppose that Congress, when proposing the Eleventh Amendment, had appended to it a proviso that nothing therein contained should prevent a State from being sued by its own citizens in cases arising under the Constitution or laws of the United States: can we imagine that it would have been adopted by the States? The supposition that it would is almost an absurdity on its face."

The present case is an attempt to strain the Interpleader Act to a construction never imagined or

dreamed of. Suppose that Congress, when considering the bill, had let it be known that it contemplated that the Act included interpleader of inheritance tax claims: can we imagine that it would have been passed in the face of the probable opposition of most of the States? It is to be noted that the desires of several of the States were considered of great importance in the passage of the Act of August 21, 1937 (Senate Report No. 1035, 75th Congress, 1st Sess.).

In view of the Eleventh Amendment Congress could not authorize an executor to interplead the question of his estate's inheritance tax liability by interpleading the States themselves. It is the executor's premise that Congress could, however, escape that prohibition and authorize interpleader of such a tax liability through the device of interpleading the tax officials as individuals. The Interpleader Act provides only for interpleader of "claimants", and defines such claimants as those persons who, if their claims were established, would be entitled to the plaintiff's admitted obligation. In most, if not all cases, the State, and the State only, is entitled to the inheritance tax obligation. The legislative history of the Act shows clearly that Congress did not have in mind interpleader of inheritance tax or any other tax obligations, and that it had no intent to create a device for circumventing the Eleventh Amendment. How, then, can any court construe the Act as accomplishing such an unintended result? How can it be done consistently with the established rule that a statute will be construed so as not to raise a grave doubt as to its constitutionality? How can it be done, when to do so will require reading into the Act a definition of the word "claimant" for the purpose of interpleader of

conflicting claims as to inheritance tax liability which is different from and inconsistent with the express definition given that word in the Act? How can any court so construe the Act as to impute to Congress an intent to circumvent the Eleventh Amendment, especially when it did not in fact have any such intent?

AS TO DIVISION III OF THE EXECUTOR'S ARGUMENT.

In this part of its Brief the executor disregards the fact that suits in equity to enjoin a person from committing a threatened wrong, and suits in equity to interplead two adverse claimants, are based and proceed upon entirely different principles.

Starting with the premise that a district court may entertain a bill in equity to enjoin a state official from threatening to enforce an unconstitutional statute (or a constitutional statute in an unconstitutional manner), wihout violating the Eleventh Amendment, the executor jumps to the conclusion that *therefore* it may entertain a bill of interpleader against the officials of two states to determine which of the two states is entitled to an inheritance tax on the intangible property of a decedent, without violating that Amendment.

The pathway of sound reasoning does not lead from the premise to the conclusion. An examination of the cases which establish the premise, and a study of the principles and line of reasoning on which the premise is based make it clear that the conclusion cannot be reached.

The principle and line of reasoning upon which such cases rest is that a state official who threatens to collect an unconstitutional tax is acting without the authority of the State. The State has no power to impart to him

any immunity from responsibility to the supreme authority of the United States. The official in such a case is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct". (*Ex parte Young*, 209 U. S. 123, 159–160). He is threatening to commit an irreparable personal wrong or trespass against the plaintiff or his property. The plaintiff comes into equity for the sole purpose of obtaining an injunction to prevent him from committing the threatened act. The principle of equity invoked is that a suit in equity may be brought to prevent a threatened wrong.

The purpose of the equitable remedy of interpleader, however, is to enable a stakeholder to obtain *in one proceeding* a *discharge* from an admitted liability to which there are two or more claimants. The court is to weigh the right or title of each claimant and determine which according to equity is the better. *Sanders* v. *Fertilizer Works*, 292 U. S. 190, 199. The plaintiff comes into equity as a stakeholder for the purpose of requiring that all of those *claimants* press *their claims* in *one court* and in *one proceeding*, rather than in separate courts or separate proceedings. He is seeking a discharge from an obligation, not prevention of a threatened trespass or wrong.

In the *Young* case and like cases the sole purpose of the suit is to enjoin the defendant from committing a threatened trespass or wrong. He is to be stopped from doing something which he has no right to do. Although he may be a state official, about to do something which the State statute expressly authorizes or requires him to do, he still may be stopped from doing it if it would deprive the plaintiff of his constitutional rights, if it

would violate the Fourteenth Amendment. In interpleader, on the other hand, the purpose of the suit is to *require* the defendant to do his threatened act in one place rather than in another. The executor does not allege that the California respondents are commiting a wrong in attempting to prove that the decedent was domiciled in California. The only purpose of the interpleader is to require that claim to be prosecuted in the Massachusetts District Court rather than in the California state court.

In suits to enjoin threatened wrongs the plaintiff says: "I am under no obligation to the defendant, and it is equitable that the defendant should be prevented from pressing me further." In interpleader the plaintiff says: "I am indebted to one defendant or the other. It is inequitable that each should try to establish his claim to that obligation in the court of his own state. They should be required to press their claims at the same time and place in one proceeding, and I am entitled to be discharged in that proceeding from further obligation to either of them."

Not even the principle of the *Young* and similar cases can be invoked to permit a Federal court to entertain a suit against a State official "where the State, though not named as such, is, nevertheless, the only *real* party *against which alone* in fact the relief is asked, and against which the judgment or decree effectively operates." A suit against a state official in such a case comes within the prohibition of the Eleventh Amendment. *In re Ayers,* 123 U. S. 443, 505–6; *Missouri etc. Ry. Co.* v. *Missouri R. R. etc. Commissioners,* 183 U. S. 53, 58–9; *Missouri* v. *Fiske,* 290 U. S. 18, 27; *Monaco* v. *Mississippi,* 292 U. S. 313, 322; *Lynch* v. *U. S.,* 292 U. S.

571, 582; *Ex parte State of New York, No. 1,* 256 U. S. 490. "There is a wide difference between restraining officers of the State from interfering in such cases with the property of a citizen, and restraining them from prosecuting a suit in the name of the State in her courts to collect an alleged claim." (*Ayers* case, p. 509). In interpleader of inheritance tax obligations the States *must* be the *real* parties in interest. The relief asked is a discharge from further liability from such obligation, —*i. e.* from further liability to *both* States involved. Furthermore, the *real controversy* in such cases is the controversy as to the *jurisdictional fact* of domicile. Such a controversy of fact, for the purpose of settling the inheritance tax liability of the plaintiff, *must* be a controversy between the States, for such an obligation is an obligation to the State. The decree determining domicile and discharging the executor accordingly must of necessity effectively operate against the State whose claim is rejected.

At page 34 of its Brief the executor says that "The Court can neither assume nor determine that either set of officials is *acting legally,*" without a hearing on the facts as to the domicile. Such a statement leaves entirely out of consideration the situation in California as to the powers and functions of the California respondents. Wherein are any of them acting or threatening to act illegally? The Appraiser, as an officer—a referee—of the court, can only investigate and report to the California court, which report will amount only to prima facie evidence in the hearing before that court. There can be nothing illegal about his making an investigation or filing a report of his findings and conclusions, whether or not those findings or conclusions may

turn out to be wrong. Neither the Controller nor the Inheritance Tax Attorney has yet come into the picture in the pending tax proceeding in the California court, nor will they until after the Appraiser (now enjoined) files his report in court. They would not then be acting illegally in contending that the California court find the domicile to be in California. Even if such a finding should be wrong, they are not threatening to commit an irreparable injury. Nothing they can do would or could deprive the executor of any of its property without due process.

The situation is entirely unlike that in the case such as *Ex parte Young* and the other cases relied on by the executor. In those cases the officials were threatening by legal proceedings to do something which, if the plaintiff's contention were correct, would violate the defendants' constitutional rights. In the present case the executor makes no claim that the domicile was not in California, or that the California respondents are acting arbitrarily or wrongfully in so contending, or that a finding by the California court of a California domicile would be erroneous. In the absence of any such allegation or claim it must be assumed that they are acting legally, and it should also be assumed that there is or may be substantial evidence to support such a finding. There is no similarity in the situations.

The executor takes the position that if each State imposed its inheritance tax upon the basis of its being the domiciliary State, it would follow *ipso facto* that "one or the other of the States will be violating the Fourteenth Amendment." (P. Brief, 41). The executor has intentionally not alleged either that the California respondents or that Mr. Long for Massachusetts is acting

arbitrarily and without substantial evidence to support their respective conclusions as to the domicile. Its suit would not have been an interpleader suit if it had done so. Its whole case rests on its position that from the *mere fact* of such a determination by each side the resulting assessment by one or by the other would violate the due process clause.

The District Court took the same position, relying on *First National Bank* v. *Maine,* 284 U. S. 312. That case, however, neither so held or so implied, nor did the case of *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204. In each of those cases the *only question* was whether intangibles could be subjected to an inheritance tax by a state *other than* the domiciliary state. The state whose tax was involved was admittedly *not* the domiciliary State. The only point established was that no State may tax anything not within her jurisdiction without violating the Fourteenth Amendment, and that the only State which had such jurisdiction over the intangibles was the State of the decedent's domicile. This Court was there concerned with a question of multiple taxation "following misapplication of some legal fiction or conflicting theories concerning the *sovereign's right* to exact contributions." (*Minnesota* case, p. 212).

In the present case neither State or set of officials is threatening to misapply any legal fiction, such as claiming that credits have a taxable situs at the domicile of the debtor instead of, or as well as, at the domicile of the creditor. Each State is proceeding on the same theory, *i. e.* that intangibles are taxable at the domicile of the decedent. There are no conflicting theories concerning the sovereign's right to exact contributions. The only conflict alleged is a conflict as to a question of

fact—the jurisdictional fact—the place of the decedent's domicile.

There is nothing in those cases which indicates that conflicting decisions by the tribunals of the two States as to the jurisdictional fact of domicile and the imposition of the tax accordingly would necessarily involve a violation of the Fourteenth Amendment by one of them, nor does such a conclusion follow from them.

It is well established that the courts of one sovereignty are not bound by the determination of the fact of domicile by the courts of another sovereignty, where that fact is a jurisdictional fact. *Iowa* v. *Slimmer,* 248 U. S. 115; *Olmsted* v. *Olmsted,* 216 U. S. 386; *Chase National Bank* v. *Norwalk,* 291 U. S. 431, 440–1; *Thormann* v. *Frame,* 176 U. S. 350; *Overby* v. *Gordon,* 177 U. S. 214; *Burbank* v. *Ernst,* 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394. The full faith and credit clause of the Constitution has no application to prevent such determination. *Tilt* v. *Kelsey,* 207 U. S. 43.

It is equally well established that the Constitution does not guarantee uniformity of decision as to facts by the courts of two sovereign States. *Milwaukee Elec. Ry. & Lt. Co.* v. *Wisconsin,* 252 U. S. 100, 106; *Central Land Co.* v. *Laidley,* 159 U. S. 103; *Tracy* v. *Ginzberg,* 205 U. S. 170. The most that it does is to guarantee due process of law in arriving at such decision, and to that end this court may re-examine the factual situation to ascertain whether the conclusion of the state court had adequate evidence to support it. *Johnson Oil Co.* v. *Oklahoma,* 290 U. S. 158. Except for the original jurisdiction of this Court in controversies between States, the Constitution does not give the Federal Government

or courts power to oust the state court's right to determine that jurisdictional fact for itself just because of the possibility that some other state court's decision may be to the contrary.

A decision upholding the Interpleader Act, construed as authorizing interpleader by an executor of his inheritance tax liability as between two States by interpleading their tax officials as individuals, would extend the scope of the Fourteenth Amendment much nearer the "sky limit" than did the decisions of this Court in *Baldwin* v. *Missouri,* 281 U. S. 586; *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204; *First National Bank* v. *Maine,* 284 U. S. 312, and such cases. It would be construing the Fourteenth Amendment as committing to Congress the power to endow the Federal courts with jurisdiction to oust the States from their sovereign right to determine for inheritance tax purposes the jurisdictional fact of domicile of a decedent, and also the power to circumvent the Eleventh Amendment through the device of authorizing interpleader of tax officials as individuals in such cases, instead of interpleading the States which are the only *real* parties in interest.

If it were an established principle that the collection by two States of inheritance taxes, each on the basis of a determination that it was the domiciliary state would, *of itself,* constitute a violation of the Fourteenth Amendment, it is hardly conceivable that this Court would have denied certiorari in *Dorrance* v. *Martin,* 298 U. S. 678, for in that case that *very question* was *squarely raised.* It was raised in the Petition and argued in both briefs, and it also had been properly raised in the courts below. The Petition pointed out

that the Pennsylvania tax had been collected and that if New Jersey were to collect a tax on the same property "necessarily the estate would have been subjected to an unconstitutional tax by one State or the other."

The only way in which it is claimed that there might be a violation of the Fourteenth Amendment in the case at bar is that a determination by the California *court* that the decedent was domiciled in California might turn out to be wrong. It is settled that where collection of a tax cannot be enforced except by suit in court, of which the taxpayer has notice and in which all rights to contest the legality of the tax assessed are open to him as a defense the taxpayer is not deprived of his property without due process of law, for the opportunity to contest the tax, and defend against its legality in the suit brought to enforce the payment, would give him his day in court. Opportunity to be heard in judicial proceedings to enforce the tax constitutes due process of law. *Nickey* v. *Mississippi,* 292 U. S., 393, 396; *Mt. St. Mary's Cemetery Ass'n* v. *Mullins,* 248 U. S. 501; see *DePauw University* v. *Brunk,* 53 F. (2) 647, Aff'd 285 U. S. 527; *Palmer* v. *McMahon,* 133 U. S. 660. In the case at bar the California tax is determined and enforced by a proceeding in court and of such suit the taxpayer has notice and all rights to contest the legality of the tax are open to the taxpayer in that court (see pp. 10-13 *supra*).

If, then, the mere fact that conflicting decisions had been arrived at by the tribunals of the States would not, of itself, involve a violation of the Fourteenth Amendment, *a fortiori,* the mere existence of the possibility of such conflicting decisions cannot support an allegation that such a violation is threatened.

In *City Bank* v. *Schnader*, 291 U. S. 24, the paintings of a New York decedent, which were in Pennsylvania on loan for exhibition purposes at the time of the death, were about to be subjected to the Pennsylvania inheritance tax. The bill alleged that, as the property was only temporarily within the State, it had no tax situs in Pennsylvania and that therefore the threatened tax would violate the Fourteenth Amendment. The defendants, the Attorney General and the Secretary of Revenue, had appeared *generally*, and objected to the jurisdiction of the court solely on the ground of adequacy of remedy in the state courts. No question was raised or considered as to the effect of the Eleventh Amendment. The only question considered on the appeal was whether the district court was right in dismissing the bill on the ground that the plaintiff had an adequate remedy at law because it could appeal from the appraisement to the county court, and the point decided was that, as the statutory remedy would lie only in the state court and was not cognizable by the Federal courts, its existence could not oust Federal equity jurisdiction.

The situation and questions involved in that case were entirely unlike those in the present case. The plaintiff was seeking only injunctive relief against the defendants. The district court's jurisdiction over the defendants did not hinge upon whether or not the bill was a bill of interpleader, for the defendants resided within the judicial district of the court. The bill asked for no relief as to New York or the New York tax. Neither New York nor the New York tax officials were parties, nor could they be bound by any of the findings or conclusions of the district court. They were not bound by any admission or stipulations as to the facts. The

plaintiff was not, and did not have to be to come within the enabling statute, seeking a discharge by the court in one suit from further liability for an obligation as to which two claimants were adversely claiming ownership.

The gravamen of the complaint was that, if the facts were as alleged, the tax claimed would be unconstitutional and that therefore the defendant tax officials should be enjoined from assessing or attempting to collect the tax. It was not, as in the present case, that if the facts were as claimed by A, the tax asserted by B to be due B's State would be unconstitutional, and that if the facts were as claimed by B, the tax asserted by A to be due A's State would be unconstitutional, and that therefore the court should settle the question in one suit as to whether the tax is due to A's state or to B's state and discharge the plaintiff from further liability therefor to both of them.

Furthermore, there appears to have been no controversy as to the facts (same case, 293 U. S. 112, 117). The only issue on the merits of the case was whether on those facts the paintings as a matter of law had a tax situs in Pennsylvania.* Also, no question was involved

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* In this connection we wish also to point out that, as such injunction suit can be maintained only on the theory that for the purposes of such suit the defendant officials are to be considered as "stripped of their official or representative character" (*Young* case, p. 160) it must follow that neither the State nor any successor Attorney General or Secretary of Revenue would be bound by the admission or stipulations. Suppose a successor had felt that the evidence available would have warranted a different conclusion as to some vital fact on which the question of law hinged? Such successor or the State would not be subject to the injunction and could not be met with a plea of *res judicata*, and such a result would not be inconsistent with the principle on which the original injunction suit was maintained. In the present case, however, while the executor is claiming in one breath that the suit is against the tax officials as individuals, in the next breath it is claim-

as to whether an executor could select the forum in which the vital issue of fact of domicile, on which the jurisdiction of the State would hinge, and require that vital issue to be tried before the Federal court in the adverse claimant State.

It is therefore clear that the decision in the *Schnader* case in no way supports the executor's contention that the present interpleader suit can be maintained and that the basis for the jurisdiction taken in the *Schnader* case is in no way affected by the decision of the Circuit Court of Appeals in the present case.

In referring to the *Dorrance Estate* litigation at page 42 of its Brief the executor is in error in stating that the failure to prevent the violation of constitutional rights was due to unfortunate pleadings and procedure by the estate in the state courts. If that estate made any such failure, it was only in the Pennsylvania court. The first final determination was made there. *Estate of Dorrance,* 309 Pa. 151. There was no such failure by the estate in the New Jersey courts. Perhaps it was too late then to be effectual. The New Jersey State Court proceedings were not completed until *after* the 1936 Amendment of the Interpleader Act.

Neither California nor Massachusetts are seeking any way to circumvent the Fourteenth Amendment.

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ing that the district court should have jurisdiction so that the question as to the executor's inheritance tax liability to both States can be settled in that one suit and that the executor be discharged by the court from further liability therefor. It would be inconsistent, however, with the principle on which interpleader lies for the judgment not to be *res judicata* as to the States and any successor tax officials. But how could it be *res judicata* as to them if the defendant officials had not been, for the purposes of the interpleader suit, interpleaded in their official and representative character rather than in their individual capacity, in which case the suit would be within the prohibition of the Eleventh Amendment.

California has no such purpose, nor may such a purpose be implied, and we assume the same to be true as to Massachusetts. In raising the question of jurisdiction, the California respondents are merely seeking to prevent a violation of California's constitutional right not to be subjected directly or indirectly to a suit in a Federal Court by a citizen of another State. They are insisting on the right of the California court to determine for itself, without interference by a Federal Court, the jurisdictional fact of domicile subject of course to an ultimate right of review by this Court if it commit error or deny due process. They are insisting that the entire judicial power granted by the Constitution did not embrace the power to entertain interpleader suits by a taxpayer to determine, as between two States, a controversy as to the jurisdictional fact of domicile.

The Constitution gives to this Court original jurisdiction of controversies between States (Art. III sec. 2) and sec. 233 of the Judicial Code makes such jurisdiction exclusive. There is nothing in the Interpleader Act or in its legislative history evidencing any intent to modify that situation. If the Interpleader Act be construed to authorize a District Court to entertain a suit to interplead such a controversy as to domicile, it would follow, by the same line of reasoning, that a District Court would determine a controversy between two States as to the location of the boundary line between them, a controversy such as heretofore always has been recognized as one within the exclusive jurisdiction of this Court. Suppose a person owned a parcel of land located at such boundary line between State A and State B, and that each State claimed that the location of the line was such as to include that person's property and

threatened to tax him or his estate accordingly. If interpleader lies in the present case, it would equally lie in the supposed case. If, as we submit, it is unthinkable that the Interpleader Act could be construed to give to a *District Court* jurisdiction to settle, as between two sovereign States, such a boundary dispute, it is equally unthinkable that it could settle, as between two States, such a domicile controversy.

Respectfully submitted,

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APPENDIX.

CALIFORNIA POLITICAL CODE.

"*Section 445. Inheritance tax department.* The controller shall maintain under his authority and direction a department, to be known as the inheritance tax department, which is hereby established, for the purpose of supervising and assisting in the administration of the inheritance or transfer tax laws of this state.

"*Duties.* Said department shall gather, record, compile, publish and distribute such information and data as the controller may direct relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement or evasion of such laws. Said department shall cooperate with, advise and assist inheritance tax appraisers, county treasurers, district attorneys, and other officers and persons in the administration and enforcement of the inheritance or transfer tax laws of this state, and shall prepare, publish and distribute such blank forms for the use of inheritance tax appraisers or other use as the controller may direct.

"*Attorneys.* In connection with said inheritance tax department, the controller may appoint, in addition to other employees provided for by statute, an inheritance tax attorney whose office shall be in the City of Sacramento, five assistant tax attorneys, two of whom shall have their offices in the City of Los Angeles, two of whom shall have their offices in the City and County of San Francisco, and one of whom shall have his office in the City of Sacramento. Said attorneys shall be civil executive officers and shall be admitited and licensed to

practice before the supreme court of this state. The inheritance tax attorney shall, under the authority and direction of the controller, have general supervision of said department. He shall have particular charge of the legal work connected with said department and shall perform such other duties as the controller may direct.

"*Services.* Said assistant inheritance tax attorneys shall perform such legal and other services relative to the administration and enforcement of said inheritance or transfer tax laws in the respective counties in which their offices may be situated or in any neighboring county, as the controller may direct."

"*Salaries.* . . ." (Omitted because not material.)

"*Expenses.* . . ." (Omitted because not material.)

PERTINENT PARTS OF THE INHERITANCE TAX ACT OF CALIFORNIA.

ACT OF 1921 AS AMENDED 1923, 1925, 1927 AND 1929.

"SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. . . .

"SEC. 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other; *provided,* that the superior court having

acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said probate proceedings all questions in relation to any tax arising under the provisions of this act: (*a*) Upon property passing in said probate proceedings. (*b*) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

"SEC. 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate or any person interested therein, or any other person whom he may have

reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or if such executor or administrator, or other person under oath concerning such property and the value thereof and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning

of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

"(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notice to be posted at the court house in the county where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon the clerk of the said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall give notice of said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections,

said court, may make such order as to it may seem meet and proper in the premises; provided, that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.

"(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

"SEC. 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor, and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred,

to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof."

"SEC. 18. The orders, decrees and judgments fixing tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

"SEC. 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor;"

"SEC. 22. All taxes levied and collected under this act shall be paid into the state treasury to the credit of the general fund."

Calendar No. 583.

74TH CONGRESS *1st Session* SENATE REPORT No. 558

THE FEDERAL INTERPLEADER BILL

April 15 (calendar day, April 29), 1935.—Ordered to be printed

Mr. AUSTIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1277]

The Committee on the Judiciary, to whom was referred the bill S. 1277 authorizing persons, firms, corporations, associations, or societies to file bills of interpleader, having had the same under consideration, report favorably thereon with an amendment in the nature of a substitute and recommend that as amended the bill do pass.

The amendment strikes out all after the enacting clause and inserts provisions which are a development of the original bill in part effecting the following changes in the present law:

Bills in the nature of interpleader are included;

The class of parties entitled to use of the remedy is broadened;

The scope of interpleader is extended over other subjects than insurance;

The titles or claims supporting the action are extended;

The venue is made more convenient for claimants;

A bond is permitted as an alternative deposit;
Privity among claimants is abolished;
Interpleader is allowed defensively in actions at law.

At the second session of the Seventy-third Congress the same bill, bearing calendar no. 1517 and S. no. 1538, was comprehensively reported from the Senate Committee on the Judiciary by the Senator from Rhode Island, Mr. Hebert, report no. 1417, which is made a part hereof, as follows:

Senate Report No. 1417, Seventy-third Congress, second session

The Committee on the Judiciary, to whom was referred the bill (S. 1538) authorizing persons, firms, corporations, associations, or societies to file bills of interpleader, or bills in the nature of interpleader, having had the same under consideration, report favorably thereon with an amendment in the nature of a substitute and recommended that as amended the bill do pass.

The Committee have been aided materially in the consideration of this bill by a number of eminent members of the bar, among whom is Zechariah Chafee, Jr., member of the Rhode Island bar and professor of law in Harvard University, who prepared a monograph on the bill for the section of insurance law of the American Bar Association. The committee in this report are availing themselves of Professor Chafee's research on this subject

THE NEED OF CHANGES IN FEDERAL INTERPLEADER LAW

Life-insurance companies, surety companies, banks, railroads, warehouses, and other kinds of corporations doing business in several States, are frequently subjected to conflicting claims by two or more persons

growing out of a single obligation previously incurred by the corporation. The equitable remedy of interpleader has long been useful for dealing just with such conflicting claims in situations where the claimants all live in the same State. The stakeholder admits liability and is anxious to pay the person rightfully entitled to payment if it can be ascertained which of the claimants is that person. Interpleader enables the stakeholder to put the money or other property in dispute into court, withdraw from the proceeding, and leave the claimants to litigate between themselves the ownership of the fund in court.

Since the claimants are now enabled to assert their rights in the interpleader proceeding, an injunction is issued for bidding (*sic*) the claimants to bring any further proceedings directly against the stakeholder. The claimants are greatly benefitted by the opportunity to settle their controversy in the interpleader, because the winning claimant can at once obtain the property in dispute from the court, which has such property in its possession or control. He is thus much better off than if he had merely obtained a judgment at law against the stakeholder, for then he would have been faced with the difficulties of finding assets and levying execution. Thus interpleader is a remedy which benefits all parties concerned.

In many controversies where interpleader would be desirable, difficulties arise because the claimants reside in different States. This may prevent the life-insurance company or other stakeholder from obtaining interpleader in a State court. For example, if a Pennsylvanian and a Californian each claimed to be the proper beneficiary of a life-insurance policy, the company could

not force the Californian into the Pennsylvanian court in order to interplead there with the Pennsylvanian, because the process of the Pennsylvania courts does not run beyond the limits of the State. This was definitely established by the Supreme Court decision of *New York Life Insurance Co.* v. *Dunlevy* (241 U. S. 519), decided in 1916.

In the absence of special Federal legislation, interpleader in a United States court would also be difficult to obtain when the claimants reside in different States, because the process of a United States court does not normally run outside the Federal district in which suit is brought. Thus, in the case described above, a United States district court in Pennsylvania could not acquire personal jurisdiction over the Californian, and conversely such a court in California could not acquire personal jurisdiction over the Pennsylvanian. Consequently the Dunlevy case left insurance companies without an adequate remedy in either State or Federal courts.

A partial remedy for this injustice was obtained in 1917, soon after the *Dunlevy* case, by the insurance companies. Congress then enacted the first Federal interpleader act (39 Stat. 929) enabling these companies to interplead in the United States court when the claimants lived in different States, and providing that the process of the court could run into all parts of the United States, wherever the various claimants lived. A second statute in 1925 (43 Stat. 976) made some improvements, and the existing third statute, enacted in 1926 (44 Stat. 416, 28 U. S. C. Supp., sec. 41 (26)) made further improvements and extended the benefits of the act to certain other types of stakeholders who badly

needed relief, namely, casualty companies and surety companies. This legislation has worked admirably. Many suits have been brought under it[1] and the disputes between the claimants have been settled quickly with apparent satisfaction to themselves as well as to the insurance companies and other organizations benefitted by the statutes.

Many important businesses which are vexed by similar claims from residents of different States still remain outside the scope of this legislation, for instance, railroads, warehouses, banks (especially savings banks), and oil companies operating under licenses when ownership of the royalties is disputed or uncertain. The successful operation of the Federal interpleader legislation in its present limited form indicates that the benefits of this remedy could be justly extended to such other kinds of businesses. The main purpose of the proposed bill is to do this.

The existing limits on the kinds of companies which are permitted to file bills of interpleader are removed, so that this remedy will become available to individuals and corporations generally if they are subjected to claims by residents of two or more States. In addition, it seems desirable to ask Congress to remove definitely a few other obstacles which limit the power of the United States courts to handle these conflicting claims satisfactorily, and the proposed bill contains several provisions aimed at such obstacles.

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[1] A list of reported cases under the various Federal statutes until June 1932 will be found in 41 Yale Law Journal, 1164, n. 103, and 1165, nn. 104–106. Out of 25 reported cases there listed, interpleader was granted in 20 cases and denied in 4 cases; in one case the final outcome remained doubtful. At least 8 more cases granting interpleader have been subsequently reported. It is probable that numerous other cases have granted interpleader without getting reported.

The Committee have had constantly in mind the rights of the private citizens who are asserting claims against the various kinds of corporations that might file bills of interpleader, and has so drawn the bill as to protect and further the interests of these claimants.

The need for such legislation has already received the attention of members of the Senate and the House of Representatives. H. R. 16335 introduced January 19, 1931, by Representative Thatcher (74 Congressional Record 2628, 1931), and S. 2216, introduced December 17, 1931, by Senator Barkley (75 Congressional Record 670, 1931), allow "any person, firm, corporation, association, or society" to have interpleader under specified conditions and provide that the action may be instituted "in a district in which one or more of such claimants resides." Bills to the same effect are pending in the present Congress.

S. 1538 was introduced by Senator Hebert on April 17 (calendar day, Apr. 26), 1933. Favorable action thereon was recommended in 1933 by the standing committee on insurance law of the American Bar Association and by the association. An identical bill was introduced by Representative Knutson of Minnesota on March 10, 1933. It is hoped that if the bill is enacted into law no further changes in the Federal Interpleader Act will be found necessary for a long time to come.

Changes from Present Law

The bill as originally introduced provides for a number of changes in the present interpleader law. Most of these changes are included in the amendment recommended by the committee. The amendment, however, contains additional provisions not found in the original

bill. Reasons why the committee believes the amendment in the nature of a substitute preferable to the original bill will be hereinafter set forth.

The changes in the present law as embodied in the amendment recommended by the committee, together with the reasons therefor, are as follows:

1. Bills in the nature of interpleader are included. A bill in the nature of a bill of interpleader describes a suit filed by a stakeholder who has some special ground for equitable relief besides the double vexation. For instance, he is a trustee or wants cancelation of an instrument for fraud. On the other hand, double vexation is the only reason for equitable jurisdiction over a bill of interpleader (often called a strict bill) and the substantive questions at issue are nearly always legal. The practical difference between the two types of bills is that the long-established equitable principles limiting strict bills are considerably relaxed in cases of bills in the nature of bills of interpleader.

Federal jurisdiction over such proceedings would be very valuable for the just settlement of many controversies, especially where surety companies are involved. For example, a surety company writes a nonstatutory bond covering a building contractor, and it is doubtful whether it runs to the benefit of materialmen as well as of the landowner, who is a citizen of a different State from the materialmen. The company may have certain defenses if the bond be construed one way and not if it be construed the other. The amount of the bond is insufficient to cover both the materialmen and the landowner in full, so that the surety company wishes to pay the total amount of the bond into court and interplead

these various claimants. A strict bill of interpleader might be denied in many courts in this case, because the above-mentioned situation as to defenses gives the surety company some interest in the outcome of the dispute. Such interest would not bar a bill in the nature of a bill of interpleader, and the great multiplicity of parties would furnish the needed special equitable ground for such a bill. In such a case Federal jurisdiction and the unlimited area for service of process would be very valuable to enable the surety company to interplead and determine its just liabilities.

It is easy to imagine other cases where Federal jurisdiction over bills in the nature of bills of interpleader is desirable. Another reason for such jurisdiction is that the distinction between these bills and strict bills of interpleader is not always clear, so that the simplest plan is to allow the United States district courts to handle both types without being obliged to draw fine distinctions between them for jurisdictional purposes.

The 1917, 1925, and 1926 acts mention only bills of interpleader, and all the reported cases where relief was given under those acts involve strict bills. The existing statutory language may be sufficiently broad to include bills in the nature of bills of interpleader, but one district judge has held to the contrary.[2] Therefore, they have been expressly included in the proposed statute.

2. The right of interpleader is extended to persons, firms, corporations, and associations for the reasons mentioned in the foregoing section of this report wherein is set forth the general need of changes.

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[2] Dawkins, J., in *Pacific Mut. Life Ins. Co.* v. *Lusk* (46 F. (2d) 505) (W.D. La. 1930)

3. The subject matter in controversy is broadly defined to correspond with the extension of the parties who can interplead. Under existing interpleader law, which is limited to certain kinds of insurance organizations, the subject matter is limited to money or property or bonds or policies of insurance or certificates of membership. Under the amended bill the subject matter is extended by the addition of notes, certificates, or other instruments. Loans are also included because insurance companies are frequently confronted by two adverse claimants of the right to borrow under policies. There are also embodied "obligations", which would include informal contracts and probably tort obligations where the stakeholder is only a technical tort-feasor. Provision is also made for a claimant of a benefit of any of the above, which would include disputes over the right to the cash surrender value of an insurance policy.

4. The prerequisites of interpleader are stated as facts to be proved and not as averments in the bill. This change is formal only, and resolves a doubt as to the interpretation of existing interpleader law.

5. The stakeholder may either deposit the fund in court or file a bond. In the original bill, the deposit clause precedes the jurisdiction clause, but the amendment places it after that clause. Thus paragraph (a) of the amendment describes successively the persons who can file bills of interpleader, the subject matter in dispute, and the claimants; and then proceeds to state the requirement of deposit of the "res" in court. The deposit clause departs from the existing statute in some respects.

The amended bill allows the stakeholder, as an alternative to a deposit, to file a surety bond approved by the

court. Although the disputed subject matter will ordinarily be deposited in court, situations sometimes arise where the rigid requirement of a deposit would prevent just relief. For example, it is obvious that a deposit is impracticable when one claimant to the benefits of life insurance demands one disposition (or option) under the policy and the other claimant demands a very different disposition (or option). To illustrate, if claimant A demands the cash surrender value of the policy and claimant B demands the continuance of the insurance with the cash surrender value left intact, the requirement to deposit the thing in dispute cannot readily be complied with. Yet it would be harsh to deny interpleader under such circumstances. A bond in such a case will protect the claimants. Also the deposit of the fund in court involves a deduction for the clerk's commission (sometimes called poundage) and there will be no such deduction in the case of a bond. Moreover, the bond will entitle the winning claimant to interest.

6. Privity among claimants is expressly abolished. State courts have frequently denied interpleader in situations where it ought justly to be granted, because of an artificial requirement of privity among the claimants. For example, a warehouseman has been denied interpleader against the bailor and a claimant under a paramount title. It seems desirable to take advantage of the opportunity offered by the proposed bill to insert an explicit provision negativing the application of this doctrine. The extension of interpleader to new classes of stakeholders should not be hampered by narrow limitations on the remedy which may prevent justice from being accomplished in many situations where the interpleader is badly needed.

7. The venue provision is simplified. The amendment liberalizes the venue provisions of the 1926 act, which appear at two points in that statute. In section 1, where the essential requirements of interpleader are phrased as necessary averments in the stakeholder's bill, the first averment specified is "that one or more persons who are bona fide claimants * * * resides or reside within the territorial jurisdiction of said court." This clause also appeared in the acts of 1917 and 1925. The words "bona fide" were inserted presumably to prevent an insurance company from obtaining interpleader through a pretended claim. Inasmuch as such a claim, if proved, would lead to the dismissal of the bill under well-settled equitable principles, these words seem unnecessary. Their meaning is obscure, and they have been omitted.[3] The rest of the clause just quoted is substantially embodied in paragraph b of the amendment. The second passage of the 1926 act relating to venue appears in four long sentences at the beginning of section 2 of that act. Inasmuch as the 1926 act and its predecessors related chiefly to interpleader by life-insurance companies, Congress was much concerned with the problem whether suit ought to be brought at the residence of a beneficiary or an assignee, and the 1917, 1925, and 1926 statutes all go into this question in great detail. The courts have had considerable difficulty in understanding these provisions and have been inclined to disregard their detailed requirements and allow interpleader to be brought in any district where

[3] The only reported case discussing "bona fide" is *Ætna Life Ins. Co.* v. *Mason*, 30 F. (2d) 715 (D. N. J. 1929), in which the court treated these words as superfluous.

a claimant resides.[4] Because the proposed bill permits interpleader for all sorts of stakeholders, all these limitations upon venue seem unnecessary. Consequently, they have been discarded in the amendment. The only requirement now made is that one of more claimants must live in the district in which suit is brought.

8. Interpleader is allowed defensively in action at law. Although this procedure does not correspond to anything in the interpleader acts of 1917, 1925, and 1926, the convenient procedure which is described has already been used by many Federal courts under section 274b of the Judicial Code (U. S. C., title 28, sec. 398), and this section seems to have been construed to the same effect by the Supreme Court. However, there is some important judicial authority against this interpretation of section 274b. The proposed bill offers an opportunity to make it absolutely certain that a defendant can interplead in an action of law whenever he would also be entitled to interplead by a bill in equity.

The following example will illustrate the desirability of the provision in paragraph e. A Connecticut life-insurance company is sued at law in the United States district court in Connecticut by a New York woman who claims to be the sole beneficiary under a matured policy. A Massachusetts woman also claims to be the sole beneficiary and threatens to sue the company in a Massachusetts State court. The company could file an original bill of interpleader in equity in a United States

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[4] *Kansas City Life Insurance Co.* v. *Adamson*, 24 F. (2d) 107 (N. D. Tex. 1928); *Bankers' Life Co.* v. *Ebbert*, 48 F. (2d) 907 (W. D. Pa. 1928). Stricter cases dealing with the narrower venue provisions of the 1917 act were *Penn Mutual Life Insurance Co.* v. *Henderson*, 244 Fed. 877 (N. D. Fla. 1917); *New York Life Ins. Co.* v. *Kennedy*, 253 Fed. 287 (S. D. Fla. 1918).

district court in New York or Massachusetts (at the residence of either claimant) and have the Connecticut action at law enjoined. But under paragraph e the company can take the simpler course of filing an equitable defense in the Connecticut Federal action at law, asking that the plaintiff therein (the New York claimant) shall interplead with the Massachusetts claimant as to the amount of the policy, which the company therewith pays into the Connecticut Federal court. This court will thereupon issue process against the Massachusetts claimant ordering her to appear in the same action, and the writ can be served upon her in Massachusetts under paragaph c, which also allows her to be enjoined from prosecuting her claim elsewhere. Thus, instead of having to go to New York or Massachusetts and start a new Federal suit there, the company can have everything settled in the existing Connecticut suit.

In addition, if a stakeholder who is a defendant in an action at law in a United States District Court would be allowed to file an ancillary bill of interpleader (or in the nature of a bill of interpleader) in that court against the law plaintiff and against other claimants who were not originally joined in the action at law, then paragraph e would allow the defendant stakeholder to obtain the same relief by the simpler method of an equitable defense. This would be possible even if he could not have filed on original bill in equity against these claimants under the provisions of paragraph a of the draft. For example, a New York life insurance company is sued in a New York district court by P, a citizen of Virginia who professes to be a beneficiary under the policy. X, another Virginian, is an adverse beneficiary claimant and threatens suit. The insurance company cannot file

a bill of interpleader against the two claimants under the 1926 act or under paragraph a of the proposed bill, because the two claimants are both Virginians and not citizens of different States. However, the insurance company would, independently of Federal interpleader legislation be allowed by decisions in the second circuit (and perhaps elsewhere) to file an ancillary bill of interpleader in connection with the pending Federal lawsuit if the company could overcome the difficulty of getting service in the New York district upon X, a Virginian. In circuits which entertain such ancillary bills, paragraph e will allow the insurance company to interplead P and X by its answer in the lawsuit in the New York district, and under paragraph c the process of that district can be served on the Virginian claimant X at his Virginia residence so as to give the New York district court jurisdiction over claimant X as well as over P.

SUMMARY OF PRINCIPAL POINTS IN WHICH COMMITTEE AMENDMENT DIFFERS FROM ORIGINAL BILL

1. The amendment is so phrased as to permit the bill, if enacted into law, to be placed directly in the United States Code, title 28, section 41, which contains section 24 (26) of the Judicial Code. The amendment follows more closely the language of the statute now in force than does the bill as originally introduced.

2. The subject matter in controversy is defined to include unwritten obligations. (Hereinbefore discussed.)

3. Provisions are made for controversies over various benefits of life-insurance policies, such as loans, surrender value, etc. (Hereinbefore discussed.)

4. The amendment reads, "two or more adverse claimants, citizens of different States." This clause is

very important because it describes the necessary diversity of citizenship which gives Federal jurisdiction. The text of the 1926 act is closely followed. The original bill is phrased: "Two or more citizens of different States, and of one or more States who are adverse claimants," etc. The existing statutory language appears preferable.

5. Privity is expressly abolished. (Hereinbefore discussed.)

6. Venue is limited to the residence of a claimant in the amendment, whereas in the original bill it also includes the residence of the stakeholder. It appears that the subject of venue so far as interpleader statutes is concerned has never been definitely decided in all particulars by the United States Supreme Court. The language of the amendment follows that of existing law and has proved satisfactory. It seems, therefore, inadvisable to extend this provision.

7. Interpleader is allowed defensively in actions at law. (Hereinbefore discussed.)

8. The amendment includes repeal and saving clauses which are deemed advisable in perfecting the interpleader statutes.